

THE HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K.
and T.D.,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/d/a "MORMON CHURCH"; LDS
SOCIAL SERVICES a/d/a LDS FAMILY
SERVICES, a Utah corporation,

Defendants.

NO. C04-2338 RSM

**DECLARATION OF STUART A.
GREENBERG**

DECLARATION OF STUART GREENBERG - 1
(C04-2338 RSM)

ORIGINAL

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1. I, Stuart A. Greenberg, Ph.D., being first duly sworn upon oath, do hereby depose and say:

2. I am duly licensed, board certified, and actively engaged in the field of psychology. I make this affidavit based on personal knowledge. A copy of my Curriculum Vitae is attached hereto as Appendix A. Briefly, my professional background is described as follows:

Stuart A. Greenberg, Ph.D., ABFP/ABPP received a PhD from USC in 1972 in Clinical Psychology and a Post-Doctoral Fellowship in 1973 from UCLA. He has been on the clinical faculty of the University of Washington since 1982. He became a Diplomate of the American Board of Forensic Psychology in 1989, a Fellow of the American Academy of Forensic Psychology in 1989, President of the American Board of Forensic Psychology in 2002, and a Fellow of the Society for Personality Assessment in 2003. From 1999 to 2003, he chaired the committee that wrote the first national examination for ABPP Board Certification in Forensic Psychology and since 2003 he has served as Vice-Chair of the Revisions Committee for the Specialty Guidelines for Forensic Psychologists. In 2003 he presented a Master Lecture at the Annual Meetings of the Society for Personality Assessment and in 2005 presented a Plenary Session address to the American Psychological Association. He has provided sworn testimony over 300 times, has presented more than 250 seminars and workshops on forensic ethics and practice, and has published extensively in the area of forensic psychology.

3. The purpose of the declaration is to provide to the court information and opinion regard Mr. Allenbach's psychological condition with regard to damages he alleges he suffered from sexual abuse and the extent of Mr. Allenbach's ability to understand his own

1 damages and disabilities and what is likely to have been the causes of those damages. My
2 understanding of the legal issues involved is that RCW § 4.16.340 allows plaintiffs to
3 bring suit to address injuries suffered as a result of childhood sexual abuse within three
4 years of: (a) The act alleged to have caused the injury or condition; (b) The time the
5 victim discovered or reasonably should have discovered that the injury or condition was
6 caused by said act; or (c) The time the victim discovered that the act caused the injury for
7 which the claim is brought. I have also been informed by plaintiff's counsel that,
8 consistent with RCW 4.16.340, Washington courts have found the statute of limitations
9 to be tolled where the plaintiff labors under a disability or when he is unable to
10 understand the significant emotional injury he has suffered.

11 4. Considered as part of forming my opinion is that Mr. Allenbach is a forty-two year old
12 male who was allegedly sexually abused by Mr. Loholt. Mr. Loholt lived on
13 Mr. Allenbach's family property and was Mr. Allenbach's Scout Leader with the Church
14 of Latter-day Saints. Mr. Allenbach reported that he was sexually abused from age eight
15 to at least age thirteen. He indicated that he disclosed the abuse to his father when he was
16 eight and again when he was ten or twelve years old. Mr. Allenbach also stated that he
17 reported the abuse to Bishop Pettit. Mr. Allenbach feels that the church is responsible for
18 the damage caused by the abuse since they had placed and then failed to remove Mr.
19 Loholt from his position with the Scouts. He feels the alleged assault has impacted his
20 life in that he is profoundly depressed, lacks confidence in himself, is bothered by
21 constant thoughts of sex, and is addicted to pornography.

22 5. As part of the examination process forming the basis for my opinion:

23 a. Mr. Allenbach was administered the following battery of assessment instruments
24 during his interviews on 8/25/05 and 10/10/05:

25 Beck Assessment Series (BAI, BDI-II, BHS, BSS)

26 Symptom Checklist-90-Revised (SCL-90-R)

27 Detailed Assessment of Posttraumatic Stress (DAPS)

28 Millon Clinical Multiaxial Inventory-III (MCMI-III)

1 Minnesota Multiphasic Personality Inventory-2 (MMPI-2)

2 Shipley Institute of Living Scale (SILS)

3 b. I interviewed Mr. Allenbach for a total of approximately 4.0 hours on 8/25/05 and
4 4.0 hours on 10/10/05 for a total of 8.0 hours of in-person interviews.

5 c. The collateral documents reviewed for this purpose were:

6 (1. South Hill General Medical Clinic Medical Record.

7 (2. Adams Medical Records.

8 (3. Hehn Medical Records.

9 (4. Amended Complaint.

10 (5. Defendant COP's Interrogatories and Requests for Production of John
11 Doe.

12 (6. Defendant COP's Interrogatories and Requests for Production to Kenneth
13 Fleming.

14 (7. Deposition of James Allenbach.

15 (8. Deposition upon Oral Examination of Kenneth Fleming.

16 5. Mr. Allenbach's psychological condition is described in his mental status examination as
17 follows:

18 a. Mr. Allenbach presented as a 42-year-old male who indicated that his heritage
19 was "3/4 Caucasian and 1/4 Indian." Mr. Allenbach appears approximately his
20 stated age. He is 5 feet, 4 inches tall which he considers to be below average. He
21 weighs 160 pounds which he considers to be underweight for his size. He has
22 blue eyes, brown hair, and comes dressed in a very casual but appropriate manner.
23 He reports that his ability to maintain his hygiene is good. He wears glasses for
24 reading and uses no other prosthetic devices. He reports that when he works
25 (which occurred last in March 2004), he works construction. He indicated "I got
26 laid off." But, he then reported that he had been fired because he asked for a day
27 of leave which they did not grant him but which he took anyway. Since then, he
28 reports that he has been "wandering."

- 1 b. In the interviews, his posture is rigid and tense and continuous movements and
2 substantial restlessness with physical agitation are apparent. He is also sniffing
3 frequently during the examination. He appears generally alert but reports that he
4 is somewhat distracted by feeling agitated and perhaps going through withdrawal
5 from addictive substances.
- 6 c. He reports that his major problem is depression although he also gets annoyed
7 easily. He states "My temper will flair up really bad." His level of distress
8 appears to be severe and during the interviews this is evidenced by crying,
9 tearfulness, anger, apprehension, restlessness, and manifest depression and
10 anxiety. He appears sad, hostile, and worried. He is mostly able to maintain
11 appropriately focused eye contact but he also often looks at the walls and the
12 floor. His speech is generally unremarkable although he occasionally speaks
13 somewhat rapidly and occasionally slurs his words although not currently
14 appearing to be intoxicated or under the influence of substances. He appears
15 anxious, depressed, fearful, tearful, and pessimistic that things will even get
16 worse. He reports "I'm on a course for destruction." He seems very intense in the
17 way he discusses things and reports severe depression but also that he is like Dr.
18 Jeckle and Mr. Hyde with regard to his temper. When especially depressed, he
19 experiences poor appetite, loss of interests, feelings of guilt, motor retardation,
20 sleep disturbances, fatigue, and weight loss. There are signs of physical agitation,
21 apprehensive manner, and restlessness in the interviews and he self-reports that
22 his anxiety level is at times disabling and has been so for at least the last several
23 years.
- 24 d. His presentation is complicated by his admitted use of illicit substances. He
25 reports that he mainly uses cocaine and meth, smoking "crystal meth." With
26 regard to the cocaine he uses crack, powder, and liquid, on a heavy basis. His
27 drug use history is marked by occasional but admittedly unsuccessful attempts at
28 abstinence and he is relatively sure currently that he is unable to quit using drugs

1 and has so since about age 18.

2 e. He reports that he has recently lost 10-15 pounds and he does not know why,
3 partly because he has experienced an increase in appetite. He is experiencing
4 insomnia.

5 f. He reports severe discomfort with talking about any sexual matter. He is sexually
6 active but with a very dysfunctional sexual history. He admits without being
7 asked that he is often sexually assaultive to his wife and his sexual interests are
8 quite deviant including excessive use of pornography.

9 g. He reports significant involvement with the legal system in addition to this current
10 civil matter. He describes that he has been convicted of identity theft and forgery
11 and he is awaiting sentencing, which is scheduled to occur on September 22,
12 2005. He reports that he is facing three to five years of incarceration. On the
13 advice of his attorney, he did not accept a plea bargain and was found guilty.
14 Mr. Allenbach is terrified by the possibility of becoming incarcerated and
15 describes despondently, "I don't think I'll make it."

16 h. The discussion of the above subject matter made it evident how depressed
17 Mr. Allenbach currently is and this examiner became concerned about the
18 possibility of suicide. For that reason, his degree of depression and suicidality
19 was further investigated because of the possibility for imminent self-harm.

20 i. He is experiencing extreme anxiety, feels hopeless and depressed, and has a high
21 suicide potential. With regard to the anxiety, he is severely distressed by
22 experiencing hot flashes, unsteadiness, inability to relax, dizziness, feeling
23 terrified and nervous and like he is choking, fearing losing control, difficulty
24 breathing, and gastrointestinal problems. When asked if he was distressed by a
25 fear of dying, Mr. Allenbach paused for a very long time and then spontaneously
26 started crying without directly answering the question at that time.

27 j. With regard to depression, Mr. Allenbach reported he feels sad most of the time,
28 does not expect things to work out, sees his life as a failure, gets little pleasure,

1 feels he is being punished, is self critical for everything that happens to him,
2 would like to kill himself, cries over almost everything, is anhedonic, has
3 difficulty making decisions, feels utterly worthless, does not have enough energy
4 to do anything, does not sleep enough, is irritable all the time, cannot concentrate
5 on anything, and does not enjoy activities that he previously had enjoyed.

6 k. His hopelessness is characterized by a sense of shortened future, feeling he might
7 as well give up, expects bad things to continue forever, anticipates a dark future,
8 does not feel lucky about anything, feels that it is foolish to want anything, looks
9 forward to bad times, and does not expect any success.

10 l. With regard to suicidality, he reports a weak wish to live and a moderately strong
11 wish to die, a moderately strong desire to kill himself, spending long periods of
12 thinking about killing himself, has accepted the idea of killing himself, is unsure
13 he can keep himself from committing suicide and is only a little concerned about
14 killing himself because his limited awareness of its likely impact on the people
15 who care about him.

16 6. The interviews of Mr. Allenbach yielded the following additional information:

17 a. Interview #1 on 8/25/05

18 b. During the course of the interview, Mr. Allenbach tried to be cooperative but had
19 substantial difficulty with his memory. He mostly did remain on topic. He was
20 casually dressed and well-groomed. Mr. Allenbach was sniffing and using tissue
21 repeatedly but did not seem to be sick.

22 c. Mr. Allenbach reported that his abuse started at age five. Before that, he
23 remembers that his mother committed suicide when he was age three. He walked
24 in and found her having done so in the bathroom.

25 d. Mr. Allenbach's biological sister took care of him, but he could not remember her
26 name. He states that she was age five when she took care of him. Mr. Allenbach
27 was then sent to a foster home. His sister was sent somewhere else and his natural
28 father never visited. He was in four foster families within a two year period

1 speculating that the moves were because he was "too hyper." The last foster
2 family is where he was when the alleged sexual abuse occurred. Mr. Allenbach's
3 foster parents told him that he did not need to know about his real parents
4 "because they are in the past." Mr. Allenbach viewed his foster father as a father
5 figure and looked upon Dr. Allenbach's nurses as mother figures.

6 e. Mr. Allenbach acknowledged that he did not remember much before the abuse.
7 Veloy Allenbach, his foster mother, beat him over the head, blamed him for
8 things, and locked him in the closet. This went on until age ten. He described it
9 as "real bad." He was depressed and scared. His foster mother abused him before
10 the sexual abuse began.

11 f. Jack Loholt, Mr. Allenbach's abuser, was a friend of his foster father's, and he
12 eventually became the Scout Master. His foster parents left on vacation with Mr.
13 Loholt, who showered and fondled Mr. Allenbach. When asked how this abuse
14 effected him psychologically, Mr. Allenbach stated that he did not understand the
15 question. Once rephrased, Mr. Allenbach said that he just wanted the abuse to
16 stop.

17 g. Mr. Allenbach acknowledged that he is currently angry at his wife and has
18 physically and sexually abused her. He has pushed her down, grabbed her, and
19 scared her. She has told him that he gets a look in his eye that scares her, but she
20 has always told him that she would never call the police on him. He also reported
21 that he is into sexually "kinky and weird stuff," which is also affecting his
22 relationship with his wife. For example, when he wants to have sex, but she does
23 not, he either forces it or gets really angry until she gives in.

24 h. When asked if anything else has contributed to his anger other than the sexual
25 abuse and the aforementioned trauma, Mr. Allenbach explained that not being
26 able to know his family and his foster father's maltreatment, including burning
27 him to teach him a lesson if he used fire, also have contributed to his anger.

28 i. Interview #2 on 10/10/05

- 1 j. Mr. Allenbach arrived on time accompanied by a female whom he identified as
2 "someone he is dating" and stated that he is now separated from his wife. At one
3 point during Mr. Allenbach's testing, he began to cry and explained that it was
4 because he missed "the wife." Mr. Allenbach also acknowledged that he had
5 abused Virginia, the woman he is dating now, by choking and hitting her. He
6 explained how he had seen her previous boyfriend abuse her, and that had been
7 upset by it, but that he ended up abusing her himself.
- 8 k. Mr. Allenbach stated that he was 12 or 13 years old when he dropped out of Boy
9 Scouts, which is when the abuse against him stopped. He also stated that at age
10 five, Jack Loholt abused him when he took baths and that when he was eight years
11 old Mr. Loholt abused him while he was affiliated with the Mormon church.
- 12 l. When asked about his mother's suicide, Mr. Allenbach began to cry. He could
13 not answer when asked about how the pain from his mother's suicide compared to
14 the pain from the abuse. Regarding his comment that abuse has ruined his life,
15 Mr. Allenbach said that he was depressed, suicidal, and had no confidence in
16 himself. He conjectured that it may have been a part of why he abused his wife.
17 He also speculated that the abuse may have caused several sexual problems and
18 led him to be interested in pornography, especially what he described as "hard-
19 core, adult torture, and S&M."
- 20 m. Comparing himself to Dr. Jekyll and Mr. Hyde, Mr. Allenbach stated that his
21 moods changed from violent to disturbed and angry without him having any
22 control over them. He then stated that his wife sold their house and moved up
23 north, which was why Mr. Allenbach had no place to live.
- 24 n. Mr. Allenbach discussed his adopted family as follows. His adopted parents were
25 Herman and Veloi, who had three biological children, named Jan, Brent, and
26 Ricky. Mr. Allenbach was adopted at age three, and a younger sister, Jill, was
27 also adopted. Mr. Allenbach said that he had thought that Jill was his biological
28 sister and that Mr. Loholt took baths with both Jill and himself. Mr. Allenbach

1 stated that his adopted family did not believe him when he told them about the
2 abuse. He said that after the root beer incident, the children went to Tommy's
3 parents and told them about it and then they went to talk to Mr. Allenbach's
4 parents. At this time, Mr. Loholt was living in Mr. Allenbach's adoptive father's
5 basement. Mr. Allenbach stated that at age eight, he was spending time with his
6 dad doing Scout activities but was not officially a Boy Scout until about age 10.

7 o. When discussing an incident in which he threw a desk at a teacher at the age of
8 10, Mr. Allenbach stated that he had probably been angry about the abuse. He
9 described a time when he had sliced up his mother's clothes because he was angry
10 and stated that even though his father knew about the physical abuse, he did not
11 do anything about it, which made him angry. Mr. Allenbach then stated that he
12 also cut up her sacred church garments, which he had received as part of a church
13 ritual. Mr. Allenbach could not explain why he cut only church garments. He
14 stated that he did not want to be involved with the church anymore because they
15 would not help him while he was on the street.

16 p. Mr. Allenbach likened the abuse of his wife with the way his mother physically
17 abused him. He stated that prior to becoming part of the Allenbach family, he was
18 a good kid, implying that he turned "bad" after being adopted. He explained that
19 his mother would take away his gifts and give them to one of her biological
20 children, then give Mr. Allenbach "hand-me-downs." He then stated that his
21 mother had only wanted to adopt Jill, but that his dad told her that if she adopted
22 Jill, she had to adopt him as well. Mr. Allenbach said that he felt he would get
23 back at his mother by beating women. Mr. Allenbach also stated that he first
24 became interested in pornography at age 18, during his mission. He interjected
25 that he had never been told whether or not his mother died after finding her in the
26 bathroom with her wrists slit. He stated that his father told him that his mother
27 could not handle the stress from raising the children, implying that this was the
28 reason that she attempted suicide.

1 q. Mr. Allenbach discussed Ken Fleming, his best friend when he was growing up,
2 from the age of four or five. He stated that the two of them were abused
3 simultaneously on multiple occasions. He recalled one incident when plaster casts
4 were taken of the boys' genitals and another that occurred while they were
5 camping. He described how the boys' sleeping bags got wet and Mr. Loholt had
6 Ken Fleming and Mr. Allenbach sleep in his sleeping bag with him. Mr.
7 Allenbach reiterated that he initially told his father about the abuse around age
8 five and that then the Kelly children told him.

9 r. Mr. Allenbach stated, "My relationship with my wife is pretty much over." When
10 asked what he thought would be the best treatment for him if not joint counseling,
11 Mr. Allenbach chose drug treatment. He stated that he was still using "crystal
12 meth" but that he had not used it in the past three or four days in an attempt to
13 quit, during which time he had abused Virginia. When asked why he was with
14 Virginia, Mr. Allenbach said that he had always had someone to lean on and a
15 "shoulder to cry on" and that he had fallen in love with her. He added that she too
16 had a bad temper and described how she had grabbed the steering wheel before in
17 order to crash the car. He also stated that he did not know why he chose these
18 types of relationships.

19 s. Ending the interview, Mr. Allenbach asked, "Does this ever go away? Will I ever
20 forgive her?" Mr. Allenbach was encouraged multiple times to go to the
21 counseling center, especially while he has been off drugs.

22 7. Summary

23 a. Mr. Allenbach reported experiencing several profoundly distressing and tragic
24 events as a child prior to the alleged sexual abuse, allegedly including witnessing
25 his mother commit suicide at age three, making the transition in and out of several
26 foster homes, and being physically abused by his foster mother, Ms. Allenbach,
27 and foster father, Dr. Allenbach.

28 b. Mr. Allenbach alleges that he was sexually abused by Mr. Loholt, a family friend

1 and later Scout leader with the LDS church. He recalled that the abuse started
2 when he was five or six years old when Mr. Loholt bathed Mr. Allenbach. This
3 progressed to Mr. Loholt exposing himself, fondling Mr. Allenbach, showing
4 Mr. Allenbach pornography and taking nude photos of him, engaging in oral sex,
5 and attempting to penetrate Mr. Allenbach anally. These occurred on several
6 occasions until Mr. Allenbach left the Scouts when he was around thirteen years
7 old. An additional factor is that it seems that the abuse continued after
8 Mr. Allenbach reported it to his father on two occasions. He later disclosed the
9 abuse to his Bishop who told him it would be taken care of, though he could not
10 recall whether he was abused by Mr. Loholt after this disclosure.

11 c. Mr. Allenbach initially presented as an individual in a state of crisis. Mr.
12 Allenbach indicated he engaged in sexually deviant behavior, including his
13 admitted sexual assault of his wife and an obsession with pornography. He also
14 showed problems with anger management, evidenced from his own self-report of
15 physical abuse of his wife and problematic drug use. At the second interview, Mr.
16 Allenbach was continuing to experience a high degree of distress. In the time
17 elapsing since the initial examination, Mr. Allenbach and his wife had separated,
18 leaving Mr. Allenbach without a home or long term partner that he had learned to
19 depend on for emotional support. Mr. Allenbach had started dating a new partner,
20 however described this as a volatile relationship and admitted that he had already
21 choked and physically hit his new girlfriend. His drug use also continued, with
22 chronic and recent use of methamphetamine.

23 8. Opinions

24 a. It is my opinion that Mr. Allenbach has incurred an almost totally disabling and
25 life-threatening level of psychological damage. He is gravely psychologically
26 disabled and has been terribly harmed by the events he reports. Each major
27 traumatic event, including the alleged sexual abuse, would have been capable of
28 causing him profound trauma, especially given the compounding effect of the later

1 events on the preceding events. At the time of the sexual abuse, it is likely that
2 Mr. Allenbach was already in a vulnerable state stemming from his early life
3 experiences of his mother's suicide and his transition to his adoptive family
4 creating a situation where he did not have a supportive home environment. The
5 sexual abuse by Mr. Loholt, is likely to have exacerbated the effects of his early
6 vulnerability. In addition, the physical abuse he received from his adopted mother
7 and ongoing unsupportive home environment that occurred while the sexual abuse
8 was happening likely added to the effects of the abuse, leaving Mr. Allenbach
9 without strategies or resources for aiding him in dealing with the abuse.

10 b. Many aspects of the abuse Mr. Allenbach experienced by Mr. Loholt have been
11 linked to unfavorable long term outcomes. Mr. Loholt was a trusted authority
12 figure for Mr. Allenbach and developed a relationship with Mr. Allenbach prior to
13 the onset of the abuse through living on his father's property. At the time of the
14 abuse, Mr. Allenbach was not yet sexually active and thus, because of its primacy,
15 it affected the first meaning and experience of sexuality for him. In addition, the
16 abusive acts themselves were varied and severe and included engaging in oral sex
17 and attempting to penetrate Mr. Allenbach anally, and Mr. Loholt taking nude
18 photographs of Mr. Allenbach as souvenirs. In addition, the abuse occurred over
19 a long duration, approximately seven years. This negative outcome was likely
20 substantially exacerbated by Mr. Allenbach's father not believing his disclosures
21 and Mr. Allenbach's unsupportive home environment.

22 c. The court should be aware that while I would ordinarily include the results of any
23 psychological testing as a substantial basis for my opinion, I am not able to do so
24 in this matter because Mr. Allenbach was so dysfunctional as to be unable to
25 complete much of the standardized testing in an adequately reliable manner.

26 d. Given Mr. Allenbach's psycho-pathological and highly dysfunctional current state
27 and life-long status, it is my opinion that he has been substantially unable to
28 understand, comprehend, and appreciate how grossly dysfunction he is, nor is he

dysfunctional current state and life-long status, it is my opinion that he has been substantially unable to understand, comprehend, and appreciate how grossly dysfunctional he is, nor is he able to adequately understand what roles the various traumas in his life have played in the development of his dysfunctionality. He is likely to need at least some level of supportive therapy for most of the remainder of his life for him to be able to function adequately, to understand himself, to appreciate his place in the world, and to understand his relationships with other human beings. He clearly does not do so at the present time, nor has he been able to substantially do so for most of his past. He is incapable of adequately recognizing the impact of sexual abuse and he is unable to adequately comprehend the role that it played in his life. He is simply so dysfunctional that he does not meaningfully or reliably understand himself, who he is, and why he feels and acts as he does.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Dated this 28th day of January, 2006.



Stuart A. Greenberg, Ph.D., ABPP
Past President, American Board of Forensic Psychology
Diplomat in Forensic Psychology, ABPP
Licensed Psychologist in Washington and Alaska

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on January 30, 2006, I electronically filed the foregoing
DECLARATION OF STUART A. GREENBERG with the Clerk of the Court using the
CM/ECF system which will send notification of such filing to the following:

Thomas D. Frey and Marcus Nash STAFFORD FREY COOPER 601 Union Street, Suite 3100 Seattle, WA 98101-1374	
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DATED this 30th day of January, 2006.

/s/Teri A. Watson
Teri A. Watson
Assistant to Michael T. Pfau,